TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 415

PERCENCE DRUGGAN, APPELLANT,

vs.

PALMER E. ANDERSON, UNITED STATES MARSHAL, ETC., AND WESLEY WESTBROOK, SUPERINTENDENT OF THE COOK COUNTY JAIL OF COOK COUNTY, ILLINOIS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED MAY 1, 1937

(21,116)

(31,116)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 415

TERRENCE DRUGGAN, APPELLANT,

vs.

PALMER E. ANDERSON, UNITED STATES MARSHAL, ETC., AND WESLEY WESTBROOK, SUPERINTENDENT OF THE COOK COUNTY JAIL OF COOK COUNTY, ILLINOIS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

INDEX

	Original	Print
Record from the district court of the United States, northern district of Illinois	1	1
Caption	1	1
Petition for writ of habeas corpus	3	1
Exhibit A—Mittimus and marshal's return	10	5
Exhibit B—Record from the district court of the United States, northern district of Illinois, in the case of United States of America vs. The Standard Beverage Corporation et al	12	6
Bill of complaint	12	6
Testimony of Brice F. Armstrong	24	11
Affidavit of John W. Fonner	28	13
Order for temporary injunction	31	14
Writ of temporary injunction	35	16
Answer	36	17
Information for contempt	45	20
Answer	55	24
Sentence and judgment	57	25
Demurrer to petition for habeas corpus	59	26
Order dismissing petition for writ of habeas corpus	60	26
Petition for appeal	61	27
Assignments of error	63	27
Bond on appeal (omitted in printing)	70	31
Præcipe for transcript of record	71	31
Clerk's certificate	72	32

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 11, 1925

[fols. 1 & 2] CAPTION—Omitted

[fol. 3] **IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

TERRENCE DRUGGAN

vs.

PALMER E. ANDERSON, United States Marshal for the Northern District of Illinois, and Wesley H. Westbrook, Jail Superintendent of the Cook County Jail of Cook County, Illinois.

PETITION FOR WRIT OF HABEAS CORPUS—Filed March 19, 1925

Your petitioner, Terrence Druggan, respectfully represents and shows unto your honors that he is now imprisoned and restrained of his liberty at the County Jail of Cook County, Illinois, at Chicago, under a mittimus issued on a judgment of the District Court of the United States for the Northern District of Illinois, Eastern Division, whereunder petitioner was sentenced to imprisonment for one year at said jail and fined One Thousand ($1,000) Dollars in a proceeding for contempt of court under section 24 of Title II of the National Prohibition Act; that your petitioner sued out a writ of error from the United States Circuit Court of Appeals for the Seventh Circuit to review said judgment; that said Court of Appeals affirmed the judgment of the District Court and ordered the issuance of a mandate.

2. Your petitioner further represents that said judgment, sentence and fine, so rendered and imposed by said District Court are illegal and void; that the National Prohibition Act, and in particular Section 24 of Title II thereof, are unconstitutional, excepting from said Act sections 1, 27, 37 and 38 of said Act, which last mentioned sections do not apply or pertain to the issues presented by your petitioner; that the said imprisonment and restraint, as petitioner is informed and verily believes, is illegal and contrary to law.

[fol. 4] 3. Your petitioner further shows that on February 6th, 1924, a bill was filed by the United States against him and certain other persons in a proceeding under section 22 of Title II of the National Prohibition Act to enjoin a nuisance; that a temporary injunction was obtained by the government on February 7th, 1924, without notice to petitioner; that on June 9, 1924, the government filed an information, pursuant to Section 24, Title II of said Prohibition Act, to show cause why petitioner and the persons joined with him should not be punished for contempt of court for certain described alleged violations of the injunctional order above referred to; that thereafter such proceedings were had, without a jury, resulting in said District Court entering judgment against your petitioner and sentencing him to imprisonment in the said

Cook County Jail and to the payment of a fine of One Thousand ($1,000) Dollars.

4. Your petitioner further shows that the injunctional order upon which said contempt proceedings were founded provided

"that pending the final hearing and determination, and until the conclusion of the trial of said bill for injunction against said nuisance, no liquor shall be manufactured, sold, kept, bartered, dealcoholized, or otherwise disposed of;"

that there was no provision or recital in said injunctional order restraining petitioner from removing any liquor or other property whatsoever from said premises; that the information for contempt set forth three overt acts each specifically relating to an alleged removal of liquor from said premises; that in contempt proceedings under section 24 of Title II of the National Prohibition Act the particular recital of the injunctional order upon which such proceedings are founded is by implication incorporated in said section 24 as fully as though there word for word set forth; that the jurisdiction of the District Court to entertain said contempt proceeding was based upon said section 24; that the jurisdiction of the District Court in the contempt proceeding in the instant case was defined by the terms of the injunctional order and did not reach acts of [fol. 5] removal which were not included in the particular restraints and inhibitions set forth in the injunctional order; that the District Court was without jurisdiction under section 24 of Title II of the National Prohibition Act to proceed under an information for contempt charging acts of removal not specifically restrained by the injunctional order.

5. Your petitioner further shows that a copy of the said mittimus is attached hereto as Exhibit "A"; and that a copy of said bill for injunction and answer thereto, the injunctional order, the information for contempt and answer thereto, the judgment and sentence is likewise attached hereto as Exhibit "B" and incorporated herein by reference.

6. Your petitioner further represents that the National Prohibition Act (excepting only sections 1, 27, 37 and 38 thereof) upon which said act said judgment and conviction are based is unconstitutional for the following reasons:

(a) That section 1 of the Eighteenth Amendment to the Constitution of the United States, provides:

"After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited;"

that the Eighteenth Amendment was proposed to the legislatures of the several States by the Sixty-fifth Congress, on the 19th day of

December 1917, and was, on the 16th day of January 1919, ratified by the legislatures of three-fourths of the whole number of States in the United States and certified by the acting Secretary of State as valid to all intents and purposes as a part of the Constitution of the United States; that the Supreme Court of the United States, in Dillon vs Glos, 256 U. S. 368, declared that the Eighteenth Amendment to the Constitution of the United States went into effect on January 16th, 1920; that under section 1 of the Eighteenth Amendment prohibition did not become effective and operative until one year from the date of its adoption by three-fourths of the whole [fol. 6] number of States, that is to say, it became effective and operative on January 16, 1920; that Congress was without constitutional power to legislate upon the subject of prohibition of intoxicating liquors until the Eighteenth Amendment became operative on January 16, 1920; that the National Prohibition Act was passed over the President's veto on October 28, 1919, nearly three months before the said amendment became operative; that Title II of the National Prohibition Act having been passed prior to the time when the Eighteenth Amendment went into effect, was passed without authority derived from the Constitution of the United States and is, therefore, unconstitutional and void; that there is no provision in the Eighteenth Amendment giving to Congress power to legislate with reference to the subject-matter of said Amendment prior to its effective date.

(b) That section 24 of Title II of the National Prohibition Act—the contempt section upon which the judgment complained of is founded—in that it fixes an arbitrary maximum and minimum penatly regardless of the degree of fault of the contemnor is an unconstitutional interference with and invasion of the judicial power; that the discretion of the chancellor in assessing penalties upon contemnors is destroyed by this section; that the District Courts from their creation by the Act of 1831 came into existence clad with plenary power to vindicate their authority and to punish contemnors; that said section 24 invades, supersedes, limits and restricts the inherent plenary power of the District Courts to assess the penalty for contempt of their authority and is, therefore, an unconstitutional interference with and invasion of the judicial power.

(c) That said section 24 in its definition of an arbitrary maximum and minimum punishment without regard to the extent of the contemnor's fault is the creation of a new statutory crime to be tried by a court of equity without a jury and upon affidavits without confrontation of witnesses in violation of the Sixth Amendment [fol. 7] to the Constitution of the United States.

6. Your petitioner further shows that the said District Court made no finding or findings as to which, if any or all, of the acts restrained by the injunctional order constituted the basis of the judgment and sentence; that your petitioner is advised that it is legally presumed that the trial court in imposing sentence apportioned same as to each of the restrained acts even though the punishment

is assessed in the aggregate; that the information for contempt set up three overt acts of removal not embraced or reached by the terms of the injunctional order; that it is impossible to determine from a consideration of said judgment how the District Court apportioned sentence and fine for each of the six restrained acts set forth in the injunctional order and the additional three acts of removal aforesaid set forth in the information for contempt; that for the reasons assigned in this paragraph the judgment, sentence and fine are void.

7. Your petitioner further shows that the injunctional order aforesaid was obtained and granted without notice first given to him; that Equity Rule 73 provides that

"No preliminary injunction shall be granted without notice to the opposite party;"

that under sections 913 and 917 of the Revised Statutes the Equity Rules are given the same force and effect as Acts of Congress; that section 22 of Title II of the National Prohibition Act, under which the bill for injunction aforesaid was instituted provides that

"Such action shall be brought and tried as an action in equity," etc;

that Equity Rule 73 applies to bills brought under section 22 of Title II of the National Prohibition Act; that the non-compliance with Equity Rule 73 went directly to the jurisdiction of the court to grant the temporary injunction aforesaid; that the injunctional order so violating Equity Rule 73 is void and all of the contempt proceedings thereon and the judgment, sentence and fine therein are likewise null and void and of no legal effect whatsoever.

[fol. 8] 8. Your petitioner further shows that he is advised that a judgment for contempt is void unless the facts found to be contemptuous are recited in the judgment order or incorporated therein, by reference to the moving papers, which, in turn, must recite sufficient facts to establish prima facie a contempt; that said judgment order found your petitioner guilty 'as charged in the information,' but your petitioner shows, that, in addition to three acts of removal described in said information, he was charged therein with 'otherwise disposing of said beverage' without further description or recital of any acts or facts which might be embraced by the term 'otherwise disposing of'; that said judgment order in finding your petitioner guilty as charged in said information included a finding that he was guilty of 'otherwise disposing of' without reciting any facts which would constitute 'otherwise disposing of' either in the order itself or by reference to the moving papers; that said judgment as to such finding is void. Your petitioner further shows that the sentence imposed was an integral part of said judgment order; that it was a unit and fixed a joint and non-severable penalty for all of the acts of which your petitioner was found guilty, including the alleged act of 'otherwise disposing of said beverage'; that said judgment as to said last mentioned finding was void and that therefore said judgment order in its entirety was void in that it fixed an

aggregate penalty on the several findings, one of which at least is void.

Your petitioner, therefore, respectfully prays that a Writ of Habeas Corpus may issue in this behalf, directed to Palmer E. Anderson, United States Marshal for the Northern District of Illinois, and to Wesley H. Westbrook, Jail Superintendent of the County Jail of Cook County, Illinois, returnable forthwith, in order that your [fol. 9] Honors may inquire into the cause or pretense of said committment, imprisonment and restraint, as provided by law, to the end that an order might be entered discharging your petitioner out of custody.

And your petitioner will ever pray.

Terrence Druggan, Petitioner. Thomas D. Nash, Michael J. Ahern, Counsel for Petitioner.

Sworn to by Terrence Druggan. Jurat omitted in printing.

Let the Writ of Habeas Corpus issue returnable forthwith.

—— ——, Judge.

[fol. 10] EXHIBIT A TO PETITION

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, set:

The President of the United States of America to the Marshal of the Northern District of Illinois and to the Keeper of the Cook County Jail at Chicago, Illinois:

Whereas, Terrence (Terry) Druggan appeared before the District Court of the United States of America for the Eastern Division of the Northern District of Illinois, on the 26th day of June, 1924, to answer an Information filed therein against him for contempt of court of violating a temporary injunction, as charged in the Information filed June 9th, 1924, and the said Terrence (Terry) Druggan upon hearing in due form of law, having been found guilty as charged in said indictment and having on July 11th, 1924, been sentenced to imprisonment in the Cook County Jail at Chicago, Illinois, for and during a period of one year and to pay a fine of One Thousand Dollars.

Now, therefore, you, the said Marshal, are hereby commanded that you convey the said Terrence (Terry) Druggan to the said Cook County Jail, and you, the said Keeper, of the said Cook County Jail, are hereby commanded that you receive the said Terrence (Terry) Druggan into the said Cook County Jail and him there safely keep until the expiration of said sentence, or until he be discharged therefrom by due process of law.

Witness the Honorable James H. Wilkerson, Judge of the District Court of the United States of America for the said District at

Chicago, aforesaid, this 11th day of July, in the Year of Our Lord Nineteen Hundred 24 and of the independence of the United States the One Hundred and Forty-ninth Year.

John H. R. Jamar, Clerk. (Seal.)

[fol. 11] Endorsements on said Mittimus: No. 3850. In Equity. District Court of the United States, Northern District of Illinois, Eastern Division. United States vs. Standard Beverage Company, Corp., at al. (Terrence "Terry" Druggan). Committment on sentence. Issued 11th day of July, 1924. John H. R. Jamar, Clerk. Executed by delivering the body of the within named defendant to the Jailer of Cook County this November 11th, *day* of A. D. 1924. Frank Farrell, Deputy United States Marshal.

[fol. 12] EXHIBIT B TO PETITION

Common-law Record in Contempt Case

Bill of Complaint

IN THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 3850

UNITED STATES OF AMERICA, Complainant,

vs.

THE STANDARD BEVERAGE CORPORATION, a Corporation, Chicago, Illinois; B. J. Bowman, Richard Curtiss, and Edward Davis, Individually and as President, Secretary, and Treasurer, Respectively, of said Corporation, and Terrence ("Terry") Druggan and Ignatius Kramer.

Bill in Chancery

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division, in Chancery Sitting:

I. The complainant, the United States of America, is a corporation sovereign, and this suit is prosecuted in its name and on its behalf by Edwin A. Olson, United States Attorney for the Northern [fol. 13] District of Illinois, Eastern Division thereof, pursuant to authority thereto granted by Section 22, Title II, National Prohibition Act, and for the purpose of enjoining and abating a certain public and common nuisance as defined in Section 2, Title II, of the said Act of Congress, and now existing upon certain premises situate within the State and Northern District of Illinois, Eastern Division thereof, more particularly described in that paragraph of this bill marked and numbered III."

II. This is a suit of a civil nature arising under the Constitution and laws of the United States and jurisdiction thereof is given to this Honorable Court by Section 22 of Title II of said Act of Congress, and by Section 26 of the Judicial Code of the United States.

III. The complainant is informed and verily believes, and on such information and belief states the facts to be, that the premises and appurtenances which, together with the equipment and liquor therein, constitute said public and common nuisance, are located on South Campbell Avenue, at and near its intersection with West Roosevelt Road, Chicago, Illinois, and are legally described as

Lots Ten (10) and Eleven (11), except the Easterly Twenty-five [fol. 14] (25) feet thereof, and Lots Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17) and Eighteen (18), in Block One (1) in Ogden and Cogghill's Subdivision of Lots Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17) and Eighteen (18), in Ogden's Subdivision of the East Half (½) of the North East Quarter of Section Twenty-four (24), Township Thirty-nine (39), North, Range Thirteen (13) East of the Third Principal Meridian, and

Lots "A" of Standard Brewery Consolidation of parts of Lots Two (2) and Three (3), and part of Pope Court Vacation in Ogden's Subdivision of the East Half (½) of the Northeast Quarter (¼), of Section Twenty-four (24), Township Thirty-nine (39) North, Range Thirteen (13), East of the Third Principal Meridian;

On said premises are buildings, sheds, offices, garages and other structures which, together, form the brewery plant of said corporation. Complainant is informed and verily believes, and on such information and belief states the fact to be, that upon said premises, and in the buildings and structures located thereon, are vats, [fol. 15] tubs, tanks, casks, boilers, pipes, engines, racking machines, machinery, trucks, vehicles, malt mills, malt hoppers, rice hoppers, malt cleaners, barley cleaners, hop mills, cookers, kettles, hop condensers, grain tanks, hop jacks, Zahm dealcoholizers, Swenson evaporators, duplex beer pumps, grain driers, sackers, beer cooler, filters, corbonating pumps, empty barrels, pump tanks, chip tanks, chip washers, pitching machines, empty half-barrels, washing machines, Schangen racker, hops, grain, malt and other products used in the manufacture of beer, and about thirty cars of cases and bottles, and appliances, apparatus, and paraphernalia and products of various kinds, all fit for use and used in the manufacture, keeping, selling, bartering, transportation and other disposition of intoxicating liquor, and also quantities of intoxicating liquor.

This bill is directed against said premises including the building and other structures and their contents, comprising said brewery plant, and the other articles and things in said buildings, as above in this paragraph III alleged, and they and all of them will hereinafter in this bill be collectively referred to as "said premises."

IV. Complainant is informed and verily believes, and on such [fol. 16] information and belief states the fact to be that the defendant the Standard Beverage Corporation, an Illinois corporation, is the owner and proprietor of the business conducted on said premises, as well as the premises themselves, and that B. J. Bowman is president, Richard Curtiss is secretary, and Edward Davis is treasurer of said corporation, and that Terrence ("Terry") Druggan and Ignatius Kramer, together with said corporation officers last named, are in active control of the business and activities of said corporation, and are associated with said corporation and said B. J. Bowman, Richard Curtiss and Edward Davis, and participate, aid, abet and assist in the activities of the said corporation, particularly upon the said premises, and in the maintenance and conduct of said business on said premises as aforesaid. All of said persons in this paragraph named are made parties defendant to this bill, said B. J. Bowman, Richard Curtiss and Edward Davis being made parties defendant both in their official and individual capacities.

V. The complainant is informed and verily believes, and on such information and belief states the fact to be, that for a long time prior to the filing of this bill, and particularly on, to wit, January [fol. 17] 22, 1924, and on said premises was packed in barrels, sold and loaded on trucks and transported from said premises. An affidavit describing some of the activities on said premises is marked "Exhibit A," and is attached to this bill and made a part hereof. The defendants have unlawfully manufactured, sold, kept, possessed, bartered and transported, and otherwise disposed of intoxicating liquor, as defined by the National Prohibition Act, on divers other dates, both before and after the unlawful acts alleged to have occurred on, to wit, January 22, 1924, on said premises.

VI. Complainant is informed and verily believes, and on such information and belief states the fact to be, that unless prevented, and forbidden by the injunction of this Honorable Court, the said unlawful use of said premises will continue and that said defendants will continue in the future to keep, maintain and use said premises, and assist and permit the maintenance and use of the same, as a place where intoxicating liquor is manufactured, sold, kept, bartered, and otherwise disposed of, in violation of Title II of said National Prohibition Act, and as a common and public nuisance as defined in Section 21 of said Title, and as a place from which in- [fol. 18] toxicating liquors are unlawfully withdrawn, removed and transported, and that said defendants, unless commanded by said injunction to prevent, will overlook, neglect and fail to prevent, such maintenance and use of said premises.

VII. Complainant is informed and verily believes, and on such information and belief states the fact to be, that the defendants above named, who are associated together in the business conducted on said premises, threaten and are about to create and keep a common and public nuisance, similar to the nuisance described in this bill, in another place and in other places in the Northern District of

Illinois, Eastern Division, and complainant verily believes that said defendants will carry out their said intentions unless restrained by an injunction of this Court.

VIII. Forasmuch, therefore, as this complainant has no remedy in the premises except in a court of equity, and to the end that it may obtain from this Honorable Court the relief to which it is entitled by right and equity, and pursuant to the provisions of Section 22 of Title II of the National Prohibition Act, it respectfully prays that the above-mentioned defendants, and each of them, be duly sub- [fol. 19] pœnaed and directed full, true and perfect answer to make to this bill of complaint, but not under oath, the answer under oath of each of them being hereby expressly waived, and that said defendants, and each of them, their successors, assigns, trustees, tenants, coadjutors, and all the persons who may be in privity with them, or any of them, in relation to, or who may purchase, or have any interest in, said premises, the business, equipment, fixtures, paraphernalia, and other things in said premises, as well as the agents, servants, subordinates, and employees of each and all of the foregoing, and all other persons, and each and every one of them, be permanently enjoined and restrained from keeping, using, maintaining, or otherwise permitting, and aiding, abetting, or assisting the keeping, using, or maintaining of said premises as a place where intoxicating liquor is manufactured, sold, kept, bartered, or otherwise disposed of in violation of Title II of said National Prohibition Act, and that said defendants and the others above mentioned be commanded not to overlook, neglect or fail to prevent such use or maintenance of said premises.

[fol. 20] The complainant prays that this Honorable Court shall order that said premises shall not be occupied or used for one year subsequent to and immediately after the entry of said order, and further prays that the court shall issue its said process to the Marshal commanding him to see to it that said public and common nuisance is forthwith abated, and to that end to close and seal said premises, and directing him, in order to effect said abatement, to destory the fixtures, machinery, equipment and other things used and kept in maintaining the said nuisance, or to remove to a place of safe keeping the fixtures and other property used and kept in maintaining the said nuisance, and forming a part thereof, as hereinbefore charged, to abide the further order of this court. Said complainant also prays that said Marshal shall be ordered to post appropriate notice on said premises of the entry of the decree of this court.

The complainant prays that this Honorable Court shall order the Marshal to seize all intoxicating liquors on said premises, and further prays that all intoxicating liquor so seized, heretofore seized, or now upon said premises, shall be taken and destroyed by the Marshal, [fol. 21] or upon the application of the United States Attorney shall be delivered to such department or agency of the United States Government as he shall designate, for medicinal, mechanical or scientific uses, or that the same shall be sold at private sale for such

purposes to any person having a permit to purchase liquor, and that the proceeds thereof to be covered into the Treasury of the United States, as provided in Section 27 of Title II of said National Prohibition Act.

Complainant further prays that this Honorable Court shall enter a decree directing that no intoxicating liquor, as defined in Title II of said National Prohibition Act, shall be manufactured, sold, kept, bartered, or otherwise disposed of, in or upon said premises, or any part thereof.

Complainant further prays that an injunction in personam be issued and granted by this Honorable Court against the said defendants, B. J. Bowman, Richard Curtiss, Edward Davis, Terrence ("Terry") Druggan, and Ignatius Kramer, enjoining and restraining them, and each of them, from manufacturing, selling, bartering, or keeping, or soliciting, taking, or accepting orders for the sale, shipment, or delivery of any intoxicating liquor, contrary to the [fol. 22] provisions of the National Prohibition Act, at any place within the Northern District of Illinois, Eastern Division thereof, and that this court shall grant such other and further relief in the premises as your Honors may deem just and equitable.

Complainant further prays that this Honorable Court shall issue a temporary injunction, to be effective until the conclusion of the trial of this case, ordering that no liquor shall be manufactured, sold, kept, bartered, dealcholized or otherwise disposed of, in or upon said premises, or any part thereof, restraining all of the defendants, herein named, and each of them, their successors, assigns, trustees, tenants, coadjutors, and all persons who may be in privity with them, or any of them, in relation to, or who may purchase, or have any interest in, said premises, the business equipment, fixtures, paraphernalia, and other things in and upon said premises, as well as the agents, servants, subordinates and employees of each and all of the foregoing, and all other persons, and each and every one of them, from conducting or permitting the continuance of said common nuisance; from removing or in any way interfering with the [fol. 23] liquor or fixtures or other things used in connection with the violation of the National Prohibition Act on said premises, constituting said nuisance; and from keeping, using, maintaning, or otherwise permitting, aiding, abetting, or assisting the keeping, using or maintaining of said premises, as a place where intoxicating liquor is manufactured, sold, kept, bartered, or otherwise disposed of, in violation of Title II of the National Prohibition Act; ordering them not to overlook, neglect, or fail to prevent, such use or maintenance of said premises.

United States of America, Complainant, by Edwin A. Olson, United States Attorney for the Northern District of Illinois, Eastern Division.

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

STATE OF ILLINOIS,
County of Cook, ss:

Edwin A. Olson, being first duly sworn, on oath, deposes and says that he is United States Attorney for the Northern District of Illinois, Eastern Division, and is in charge of this action.
[fol. 24] Deponent has read the foregoing bill of complaint, knows the contents thereof, and says that the same is true of his own knowledge and belief, except as to those matters herein stated to be alleged upon information and belief, and, as to those matters he believes it to be true.

Edwin A. Olson.

Subscribed and sworn to before me this 6th day of February, A. D. 1924. William A. Small, Notary Public. (Seal.)

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

STATE OF ILLINOIS,
County of Cook, ss:

Brice F. Armstrong, being first duly sworn, on oath deposes and says:

I am an employee of the Internal Revenue Department of the United States, attached to the Prohibition Office, Chicago, Illinois, and my position is generally known as that of federal prohibition agent.

On, to wit, December 19, 1923, in company with Agent A. L. Lewis, I went to the premises of the Standard Beverage Corporation, [fol. 25] one of the defendants named in this bill of complaint, which said Standard Beverage Company has been from, to wit, September 7, 1923, conducting a brewery on the premises described in the bill of complaint, without a permit from the Commissioner of Internal Revenue authorizing it and permitting it to manufacture beer containing one-half of one per cent, or more, of alcohol by volume, and dealcoholizing the same. Said Standard Beverage Corporation made application for such a permit prior to December 19, 1923, and for the purpose of making an inspection of said premises in connection with said application, I proceeded to the said premises with Agent Lewis on, to wit, December 19, 1923. We arrived at said premises and were refused admission and were told to return later the same day, which we did. Upon our arrival there we were met by B. J. Bowman, President of the corporation, Richard Curtiss, Secretary of the Corporation, and Ignatius Kramer, Brewmaster. Said Curtiss and Kramer conducted Agent Lewis and me through the brewery premises, pointing out to us the method of operation, the amount of

raw materials on hand for the manufacture of beer, and casks of beer containing more than one-half of one per cent of alcohol by volume. [fol. 26] There were on the premises twenty-four casks of two hundred fifty barrels capacity each eight of which were filled with beer. We took a sample of beer from Cask No. 10 and one from cask No. 11, which samples were put into containers and poisoned to arrest further fermentation, and on the same date, to wit, December 19, 1923, delivered said samples to John W. Fenner, Chemist in Charge, Bureau of Internal Revenue, Chicago, for analysis as to the alcoholic content thereof.

On, to wit, January 22, 1924, in company with Agents Lewis, Loeffler, Kominokis, McNally, Butterfield, and Deputy United States Marshals Emery and Capps, I proceeded to the premises of the Standard Beverage Corporation to execute a search warrant duly issued from the District Court of the United States for the Northern District of Illinois. We executed the search warrant and took twenty-two samples of beer which had been manufactured and possessed on the premises of the said Standard Beverage Corporation. We poisoned, labeled and marked for identification said samples and delivered them to the United States Chemical Laboratory for analysis.

Affiant states that on December 19, 1923, when he visited the [fol. 27] premises of said brewery located as described in bill of complaint, he tested each of the samples taken by him, and that when he visited the premises on January 22, 1924, he tasted a number of samples taken from different containers on said premises. Affiant has tasted and drunk liquids containing more than one-half of one per cent of alcohol by volume many times within the past ten years, and is familiar with the taste of such liquids containing said alcoholic content, particularly beer, and from such experience is able to say and does say that the samples which he tasted were beer fit for beverage purposes, and contained more than one-half of one per cent of alcohol by volume.

Terrence ("Terry") Druggan is financially interested and in control of the operations of said brewery. Edward Davis is treasurer of said corporation and participates in its activities.

Brice F. Armstrong.

Subscribed and sworn to before me this 6th day of February, A. D. 1924. William A. Small, Notary Public. (Seal.)

(Endorsed:) Filed Feb. 6, 1924. John H. R. Jamar, Clerk.

[fol. 28] Endorsed: No 3850. In the District Court of the United States, for the Northern District of Illinois, Eastern Division, United States of America vs. the Standard Beverage Corporation, a corporation; B. J. Bowman, Richard Curtiss, Edward Davis, Individually and as President, Secretary, and Treasurer of said corporation; Terrence ("Terry") Druggan and Ignatius Kramer. Bill in Chancery. Filed Feb. 6, 1924, at — o'clock, —. M., by John H. R. Jamar, Clerk. Edwin A. Olson, United States Attorney.

And on, to-wit, the 7th day of February, 1924, came John W. Fonner, and filed in the office of the clerk of said court his certain Affidavit in support of Bill of Complaint in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

STATE OF ILLINOIS,
County of Cook:

In Equity. No.—

UNITED STATES OF AMERICA

vs.

THE STANDARD BEVERAGE CORPORATION, a Corporation, et al.

[fol. 29] Affidavit in Support of Bill of Complaint

John W. Fonner, being first duly sworn, on oath deposes and says:

I am United States Internal Revenue Chemist in Charge, stationed at Chicago, Illinois, in the Transportation Building.

On, to wit, December 19, 1923, I received from Brice F. Armstrong, Federal Prohibition Agent, two samples of beer. The bottles containing the samples bore labels indicating that the beer came from containers on the brewery premises of the Standard Beverage Corporation on the said 19th day of December, 1923.

I analyzed said samples on, to wit, December 20, 1923, for the purpose of ascertaining the alcoholic content thereof, and found that one of the samples, to which was assigned laboratory number 32983, contained 3.28 per centum of alcohol by volume, and that the other sample, to which was assigned laboratory number 32984, contained 3.22 per centum of alcohol by volume.

On, to wit, January 23, 1924, I received from Brice F. Armstrong and A. L. Lewis, Federal Prohibition Agents, twenty-two samples of beer. The bottle containing the samples bore labels indicating that [fol. 30] the beer came from containers of beer found on the premises of the Standard Beverage Corporation on, to wit, January 22, 1924. The Prohibition Agents whose names appeared on said labels as those who had taken the samples and marked and sealed same, were Brice F. Armstrong, James Kominakis and L. B. McNally. I analyzed said samples and found that eleven of them contained more than four per cent of alcohol by volume, and were intoxicating; that four of the samples contained between three and four per cent of alcohol by volume, and one of the samples contained four per cent of alcohol by volume.

John W. Fonner.

Subscribed and sworn to before me this 7 day of February, A. D. 1924. August F. Kruse, Notary Public. (Seal.)

(Copy.)

(Endorsed:) Filed February 7, 1924. John H. R. Jamar, Clerk.

(Endorsed:) No. 3850. In the District Court of the United States for the Northern District of Illinois, Eastern Division. United States of America vs. The Standard Beverage Corporation, corporation, et al. Affidavit in Support of Bill of Complaint. Filed Feb. 7, 1924. John H. R. Jamar, Clerk. Edwin A. Olson, United States [fol. 31] Attorney.

And afterwards, on, to wit, the 7th day of February, 1924, this matter coming on to be heard, the following order was entered by the Court:

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Thursday, February 7, A. D. 1924.

Present: Honorable James H. Wilkerson, District Judge.

In Equity. No.—

UNITED STATES OF AMERICA, Complainant,

vs.

THE STANDARD BEVERAGE CORPORATION, a Corporation, Chicago, Illinois; B. J. Bowman, Richard Curtis, and Edward Davis, Individually and as President, Secretary, and Treasurer, Respectively, of said Corporation; Torrence ("Terry") Druggan and Ignatius Kramer, Defendants.

Order for Temporary Injunction

And now, on this 7th day of February, A. D. 1924, this cause coming on to be heard upon the bill of complaint heretofore filed in this court, and upon the affidavits of Edwin A. Olson, Brice F. Armstrong, and John W. Fonner, duly filed in open court, and it [fol. 32] appearing to the satisfaction of the Court by inspection of the bill and said affidavits and otherwise, that a nuisance under the National Prohibition Act exists as described in said bill on the premises hereinafter described, it is

Ordered, that pending the final hearing and determination, and until the conclusion of the trial of said bill of injunction against said nuisance, no liquor shall be manufactured, sold, kept, bartered, dealcoholized, or otherwise disposed of, in or upon the premises, or any part thereof, located in the City of Chicago at West Roosevelt Road and South Campbell avenue, County of Cook, State of Illinois, described as follows:

Lots Ten (10) and Eleven (11), except the Easterly Twenty-five (25) feet thereof, and Lots Twelve (12), Thirteen (13), Fourteen

(14), Fifteen (15), Sixteen, Seventeen (17) and Eighteen (18), in Block One (1) in Ogden and Cogghill's Subdivision of Lots Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), and Eighteen (18), in Ogden's Subdivision of the East Half (½) of the North East Quarter, of Section Twenty-four (24), Township Thirty-nine (39), North, Range Thirteen (13), East of the [fol. 33] Third Principal Meridian, and

Lots "A" of Standard Brewery Consolidation of parts of Lots Two (2) and Three (3), and part of Pope Court Vacation in Ogden's Subdivision of the East Half (½) of the North East Quarter (¼), of Section Twenty-four (24), Township Thirty-nine (39) North, Range Thirteen (13), East of the Third Principal Meridian,

including the buildings, brewery equipment, garages, sheds, and other structures on said premises; and that all of the defendants, the Standard Beverage Corporation, a corporation, B. J. Bowman, Richard Curtiss, and Edward Davis, individually and as President, Secretary, and Treasurer of said corporation; Terrence ("Terry") Druggan and Ignatius Kramer, and each of them, their successors, assigns, trustees, tenants, coadjutors, and all other persons who may be in privity with them, or any of them, in relation to, or who may purchase, or have any interest in, said premises, the business, equipment, fixtures, paraphernalia, and other things on said premises, as well as the agents, servants, subordinates, and employees of each and all of the foregoing, and all other persons, and each and every one of them, be restrained and enjoined from keeping, using, main- [fol. 34] taining, dealcoholizing, or otherwise permitting and aiding, abetting, or assisting the keeping, using, or maintaining of said premises as a place where intoxicating liquor is manufactured, sold, kept, bartered, dealcoholized, or otherwise disposed of in violation of Title II of said National Prohibition Act, and that said defendants, and the others above mentioned, be commanded not to overlook, neglect or fail to prevent such use or maintenance of said premises.

Feby. 7, 1924.

Enter.

James H. Wilkerson, United States Judge.

Dated at Chicago, Illinois, this 7th day of February, A. D. 1924.

And on, to-wit, the 26th day of March, 1924, there was filed in the office of the Clerk of said Court the following Writ of Temporary Injunction with Return of Marshal/ thereon endorsed:

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[fol. 35] In Equity. No. 2850

UNITED STATES OF AMERICA, Complainant,

vs.

THE STANDARD BEVERAGE CORPORATION, a Corporation, Chicago, Illinois; B. J. Bowman, Richard Curtiss, and Edward Davis, Individually and as President, Secretary, and Treasurer, Respectively, of said Corporation, and Terrence ("Terry") Druggan and Ignatius Kramer, Defendants.

Writ of Temporary Injunction

To the Standard Beverage Corporation, a corporation, Chicago, Illinois; B. J. Bowman, Richard Curtiss, and Edward Davis, Individually and as President, Secretary, and Treasurer, respectively, of said corporation, and Terrence ("Terry") Druggan and Ignatius Kramer, as well the successors, assigns, trustees, tenants, coadjutors, agents, servants, subordinates, and employees of each and all of the foregoing and all others hereinafter mentioned, Greeting:

Know Ye, that in the above entitled cause, a motion for the issuance of a temporary injunction has been duly filed by complainant, and said motion upon due consideration has been by the court granted and such injunction issued. A copy of the order is hereto [fol. 36] attached and made a part hereof.

Witness the hand and the seal of the Clerk of the United States District Court, Northern District of Illinois, Eastern Division, this 7th day of February, A. D. 1924.

John H. R. Jamar, Clerk. (Seal.)

And on, to-wit, the 31st day of March, 1924, came the Defendants, by their attorney, and filed in the office of the clerk of said court their certain Answer in words and figures as follows, to-wit:

Answer

IN THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 3850

UNITED STATES OF AMERICA, Complainant,

vs.

THE STANDARD BEVERAGE CORPORATION, a Corporation, Chicago, Illinois; B. J. Bowman, Richard Curtiss, ond Edward Davies, Individually and as President, Secretary, and Vice-President, Respectively, of said Corporation, and Terrence Druggan and Ignatius Kramer.

[fol. 37] The joint and several answer of Standard Beverage Corporation, B. J. Bowman, Richard Curtiss, and Edward Davis, individually and as president, secretary, and vice-president, respectively, of said corporation; Terrence Druggan and Ignatius Kramer, defendants, to the bill of complaint of United States of America, complainant.

These defendants, reserving unto themselves all right of exception to the said bill of complaint, for answer thereunto, say:

(1) These defendants admit that the United States of America is a corporation sovereign and that said suit is prosecuted in its name and on its behalf by Edwin A. Olson, United States Attorney for the Northern District of Illinois, Eastern Division thereof, pursuant to authority thereto granted by Section 22, Title II, National Prohibition Act; but deny that a public and common nuisance as defined in Section 2, Title II of the said Act of Congress is now existing upon the premises situate within the State and Northern District of Illinois, Eastern division thereof, described in paragraph numbered "III" in said bill of complaint.

(2) These defendants, further answering, admit that said suit is of a civil nature arising under the Constitution and laws of the [fol. 38] United States, and that jurisdiction thereof is given to this Honorable Court by Section 22 of Title II of said act of Congress and by Section 26 of the judicial Code of the United States.

(3) These defendants, further answering, deny that the premises described in Paragraph III of said bill of complaint, together with the equipment or contents thereof constitute a public and common nuisance, as defined aforesaid.

These defendants, further answering, admit that in the building and structures located on said premises there are vats, tubs, tanks, casks, boilers, pipes, engines, racking machines, machinery, trucks, vehicles, malt mills, malt hoppers, rice hoppers, malt cleaners, barley cleaners, hop mills, cookers, kettles, hop condensers, grain tanks, hop

jacks, Zahn dealcoholizers, Swenson evaporators, duplex beer pumps, grain drier, sackers, beer cooler, filter, carbonating pumps, empty half-barrels, washing machine, Schangen, racker, hops, grain, malt, and other products used in the manufacture of beer as well as in the manufacture of non-intoxicating cereal or non-cereal beverages; that there are a number of cars of cases and bottles, and appliances, [fol. 39] apparatus and paraphernalia and products of various kinds, fit for use in the manufacture, keeping, selling, bartering, transportation and other disposition of intoxicating liquor as well as for the manufacture, keeping, selling, or bartering, transporting and other disposition of non-intoxicating cereal or non-cereal beverages; but these defendants deny that said appliances, machinery, paraphernalia and supplies above enumerated, or any of them have been used by these defendants, or any of them, in the selling, bartering, transportation or other disposition of intoxicating liquor, or have been used in the manufacture or keeping of intoxicating liquor as a finished product or for beverage purposes, and deny that there is or was at the time of the filing of said bill of complaint, on said premises, intoxicating liquor as a finished product or for beverage purposes.

(4) These defendants, further answering, admit that the defendant, Standard Beverage Corporation, an Illinois corporation, is the owner and proprietor of the business conducted on said premises, as well as the premises themselves; that B. J. Bowman is President, Richard Curtiss is Secretary and Treasurer and Edward Davies is [fol. 40] Vice President of said corporation; that said officers are in active control of the business and activities of said corporation; that Terrence Druggan is General Sales Manager and Ignatius Kramer is employed by said corporation.

(5) These defendants further answering, deny that on January 22, 1924 or from the time the Standard Beverage Corporation took possession of said premises until the time of the filing of the bill, said premises was or had been used as a place where intoxicating liquor, as defined by Section 1 of Title II of the National Prohibition Act, in violation of Title II of said Act, was bartered, sold, transported or otherwise disposed of or a place from which intoxicating liquor was unlawfully withdrawn, removed or transported, or as a place where intoxicating liquor as a finished product or for beverage purposes was manufactured and kept; and these defendants further deny that said premises and all property kept and used in maintaining the same, or any of it, are a public and common nuisance as defined and declared by Section 21 of Title II of said National Prohibition Act.

These defendants, further answering, deny that beer as a finished [fol. 41] product or for beverage purposes, containing more than one-half of one per cent of alcohol by volume was unlawfully manufactured or kept or possessed on said premises on January 22, 1924, or at any time from the time the Standard Beverage Corporation took possession of said premises until the time of the filing of said bill of complaint; and deny that on said premises on said day or during

said period beer or other intoxicating liquor was packed in barrels, sold or loaded on trucks or was transported from said premises.

These defendants, further answering, deny that on said premises they have manufactured, kept or possessed intoxicating liquor as a finished product or for beverage purposes, on divers other or any dates before or after the acts alleged by said bill of complaint to have occurred on January 22, 1924 and hereinabove denied. These defendants deny that on divers other dates, as aforesaid, they have sold, transported or otherwise disposed of intoxicating liquor as defined by the National Prohibition Act.

But, these defendants, further answering, say that said premises, buildings, machinery, etc. were purchased by the defendant, Standard [fol. 42] Beverage Corporation, from the Standard Products Company, an Illinois Corporation, on or about September 1st, 1923; that said Standard Products Company had a permit under the National Prohibition Act to manufacture cereal beverage by manufacture and dealcoholization of beer and that at the time of said purchase said permit was in full force and effect; that upon said purchase the Standard Beverage Corporation applied for a similar permit and said application was still pending at the time of the filing of said bill of complaint; that said Standard Beverage Corporation purchased from the Standard Products Company its good will, accounts, uncompleted contracts and all the incidents of a going business; that said Standard Beverage Corporation by its officers informed the local Prohibition Director's office of the situation and was authorized by it to proceed with the brewing and dealcoholization under the Standard Products Company's permit pending action on the permit applied for by said Standard Beverage Corporation.

These defendants, further answering, admit that during the period of the possession of said premises by Standard Beverage Corporation materials containing more than one-half of one per cent by volume [fol. 43] of alcohol for the manufacture of non-intoxicating cereal beverage were from time to time manufactured and possessed; but say that said materials were always dealcoholized in completing the product; that no beverage, material or liquid of any kind containing more than one-half of one per cent by volume of alcohol left the premises after the Standard Beverage Corporation purchased and took possession of said premises.

These defendants, further answering, say that by reason of the facts hereinabove stated, and particularly the authority and consent of one of complainant's officers and agents said bill of complaint and the prayers for relief therein contained are inequitable and unconscionable.

(6) These defendants, further answering, deny that they, or any of them, will in the future, unless prevented and forbidden by the injunction of this Honorable Court, keep, maintain, or use said premises or assist or permit the maintenance and use of the same as a place where intoxicating liquor is manufactured, sold, kept, bartered or otherwise disposed of, in violation of Title II of said National Prohibition Act, or as a common and public nuisance as defined in [fol. 44] Section 21 of said Title or as a place from which intoxicat-

ing liquors are unlawfully withdrawn, removed or transported, or that these defendants or any of them will overlook, neglect or fail to prevent such maintenance or use of said premises.

(7) These defendants, further answering, deny that these defendants or any of them threaten or are about to create a common and public nuisance anywhere in the Northern District of Illinois.

And these defendants, further answering, deny that the complainant is entitled to the relief, or any part thereof, in said bill of complaint demanded, and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Standard Beverage Corporation, by B. J. Bowman, Its President. B. J. Bowman, Individually and as President of said Corporation. Richard Curtis, Individually and as Secretary of said Corporation. Edward N. Davies, Individually and as Vice-President of said corporation.
[fol. 45] Terrence Druggan, Ignatius Kremer. Lyman W. Sherwood, Solicitor for the Defendants.

(Endorsed:) Filed March 31, 1924. John H. R. Jamar, Clerk.

And on, to-wit, the 9th day of June, 1924, came Plaintiff, by United States Attorney, and filed in the office of the Clerk of said Court its certain Information for Contempt in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In the District Court Thereof, June Term, A. D. 1924, ss.

No. 3850

UNITED STATES OF AMERICA

vs.

TERRENCE DRUGGAN, Alias TERRY DRUGGAN; B. J. BOWMAN, Richard Curtiss, Edward Davis, Alias Edward N. Davies; Ignatius Kramer, Alias Ignatius Kremer; Frank Lake, Francis A. Morrison, and Standard Beverage Corporation, a Corporation.

Information for Contempt

Now comes the United States of America by Edwin A. Olson, United States Attorney for the Northern District of Illinois, and [fol. 46] gives the court here to understand and be informed that, on or about the 7th day of February, A. D. 1924, in a cause then pending in the United States District Court at Chicago, for the Northern District of Illinois, Eastern Division, entitled the United States of America vs. Standard Beverage Corporation, a Corporation, et al., bearing District Court No. 3850, in Equity, a decree was en-

tered by the Honorable James H. Wilkerson, one of the Judges of said court, which said decree provided, among other things, that pending the final hearing and determination, and until the conclusion of the trial of said Bill for Injunction against the nuisance described therein, no liquor should be manufactured, sold, kept, bartered, dealcoholized, or otherwise disposed of, in, or upon the premises described in said bill, or any part thereof, and that all of the defendants, Standard Beverage Corporation, a corporation, B. J. Bowman, Richard Curtiss, and Edward Davies, individually and as President, Secretary and Treasurer respectively of said Corporation, Terrence (Terry) Druggan, and Ignatius Kramer, and each of them, their successors, assigns, trustees, tenants, coadjutors, and all persons who [fol. 47] might be in privity with them, or any of them, in relation to, or who might purchase or have any interest in said premises, the business, equipment, fixtures, paraphernalia, and other things on said premises, as well as the agents, servants, subordinates, and employees, and all of them, and all other persons, and each and every of them, be restrained and enjoined from keeping, using, maintaining, dealcoholizing, or otherwise permitting and aiding, abetting or assisting the keeping, using, or maintaining of said premises as a place where intoxicating liquor was manufactured, sold, kept, bartered, dealcoholized, or otherwise disposed of in violation of Title II of the National Prohibition Act, and that all of them were commanded not to overlook, neglect, or fail to prevent such use or maintenance of said premises.

That on or about the 7th day of February, A. D. 1924, a writ of temporary injunction granted pursuant to the provisions of Title II of the National Prohibition Act, issued out of the District Court of the United States for the Northern District of Illinois, Eastern Division thereof, directed to the defendants named in the order for temporary injunction; which said writ was duly served on the defendants, Standard Beverage Corporation, a Corporation, B. J. Row- [fol. 48] man, individually, and as President of said Corporation, and Richard Curtiss, individually and as Secretary of said Corporation, on or about the 11th day of February, A. D. 1924, and upon the defendant, Terrence Druggan, on or about the 24th day of March, A. D. 1924, by the United States Marshal for the Northern District of Illinois, Eastern Division thereof.

That on or about the 11th day of February, A. D. 1924, public notice of the issuance of the writ of temporary injunction was given by the United States Marshal for the Northern District of Illinois, Eastern Division thereof, by the posting of printed notices in and about the premises described in the order for temporary injunction.

That on or about the 31st day of March, A. D. 1924, the defendants named in said Bill of Complaint, said Decree, and said Writ of Temporary Injunction, filed their joint and several answer to said Bill of Complaint in said District Court of the United States.

That the aforesaid Terrence Druggan, alias Terry Druggan, B. J. Bowman, Richard Curtiss, Edward Davis, alias Edward N. Davies, Ignatius Kramer, alias Ignatius Kremer, Frank Lake, Francis A. [fol. 49] Morrison, and Standard Beverage Corporation, a Corpo-

ration, well knowing that said order for temporary injunction had been granted, and was then and there in full force and effect, did then and there violate the same in the manner following, to wit:

1. The said Terrence Druggan, alias Terry Druggan, B. J. Bowman, Richard Curtiss, Edward Davis, alias Edward N. Davies, Ignatius Kramer, alias Ignatius Kremer, Frank Lake, Francis A. Morrison, and Standard Beverage Corporation, a Corporation, on or about the 31st day of May, A. D. 1924, removed from the premises described in said Order for Temporary Injunction, a large number of barrels, to wit, 200 barrels, each barrel then and there containing a large quantity, to wit, 31 gallons of a cereal beverage commonly known as beer, fit for use for beverage purposes, which said cereal beverage did then and there contain more than one-half of one per centum of alcohol by volume, and the said defendants did then and there cause the said barrels hereinbefore described, to be placed in a certain railroad car and to be transported therein from the said premises to a place commonly known and described as the California Avenue Team Track of the Baltimore and Ohio Chicago Terminal Railroad Company, located at or near the intersection of California [fol. 50] avenue and Taylor street, two public thoroughfares, in the County of Cook and State of Illinois, in the division and district aforesaid; and the said defendants did then and there cause said beverage to be so removed and transported, and did then and there aid, abet, and assist in the removal and transportation thereof, and did then and there permit said beverage to be so removed and transported as aforesaid, and did then and there manufacture, sell, keep, barter, dealcoholize, and otherwise dispose of said beverage, and did then and there neglect and fail to prevent the removal and transportation of said beverage out of and from the said premises.

2. That said Terrence Druggan, alias Terry Druggan, B. J. Bowman, Richard Curtiss, Edward Davis, alias Edward N. Davies, Ignatius Kramer also Ignatius Kremer, —— Lake, Francis A. Morrison, and Standard Beverage Corporation, a Corporation, on or about the 2nd day of June, A. D. 1924, removed from the premises described in the said order for temporary injunction, a large number of barrels, to wit, 400 barrels, each barrel then and there containing a large quantity, to wit, 31 gallons, of a cereal beverage commonly known as beer, fit for use for beverage purposes, which said cereal beverage did [fol. 51] then and there contain more than one-half of one per centum of alcohol by volume, and the said defendants did then and there cause the said barrels hereinbefore described, to be placed in two certain railroad cars, and to be transported therein from the said premises to a place commonly known and described as the California Avenue Team Track of the Baltimore and Ohio Chicago Terminal Railroad Company, located at or near the intersection of California avenue and Taylor street, two public thoroughfares, in the County of Cook and State of Illinois, in the division and district aforesaid; and the said defendants did then and there cause said beverage to be so removed and transported, and did then and there aid, abet, and assist in the removal and transportation thereof, and did then and

there permit said beverage to be so removed and transported as aforesaid, and did then and there manufacture, sell, keep, barter, dealcoholize, and otherwise dispose of said beverage, and did then and there neglect and fail to prevent the removal and transportation of said beverage out of and from the said premises.

3. That said Terrence Druggan, alias Terry Druggan, B. J. Bow-[fol. 52] man, Richard Curtiss, Edward Davis, alias Edward N. Davies, Ignatius Kramer, alias Ignatius Kremer, Frank Lake, Francis A. Morrison, and Standard Beverage Corporation, a Corporation, on or about the 3d day of June, A. D. 1924, removed from the premises described in the said order for Temporary injunction, a large number of barrels, to wit, 200 barrels, each barrel then and there containing a large quantity, to wit, 31 gallons, of a cereal beverage commonly known as beer, fit for use for beverage purposes, which said cereal beverage did then and there contain more than one-half of one per-centum of alcohol by volume, and the said defendants did then and there cause the said barrels hereinbefore described, to be placed in a certain railroad car, and to be transported therein from the said premises to a place commonly known and described as the California Avenue Team Track of the Baltimore and Ohio Chicago Terminal Railroad Company, located at or near the intersection of California Avenue and Taylor street, two public thoroughfares, in the County of Cook and State of Illinois, in the division and district aforesaid; and the said defendants did then and there cause said beverage to be so removed and transported, and did then and there aid, abet, and assist in the removal and transportation thereof, and did then and [fol. 53] there permit said beverage to be so removed and transported as aforesaid, and did then and there manufacture, sell, keep, barter, dealcoholize, and otherwise dispose of said beverage, and did then an there neglect and fail to prevent the removal and transportation of said beverage out of and from the said premises.

4. That officers of the United States engaged in the enforcement of the provisions of the National Prohibition Act obtained samples of the contents of nine of said barrels, which said samples were analyzed and found to be a cereal beverage fit for use for beverage purposes, containing more than one-half of one per centum of alcohol by volume.

Wherefore, the said United States Attorney for the said United States moves this Honorable Court to forthwith cause warrants to issue under which the said defendants, Terrence Druggan, alias Terry Druggan, B. J. Bowman, Richard Curtiss, Edward Davis, alias Edward N. Davies, Ignatius Kramer, alias Ignatius Kremer, Frank Lake, Francis A. Morrison, and Standard Beverage Corporation, a Corporation, shall be arrested, and to punish them for contempt under the provisions of Section 24 Title II, National Pro-[fol. 54] hibition Act.

Edwin A. Olson, United States Attorney.

STATE OF ILLINOIS,
County of Cook, ss:

Alfred Johnson, Oscar Sandberg, Paul W. Simons, J. F. Beaupeurt, and Archie Benson, being first duly sworn, on oath say that they are familiar with the contents of the foregoing document by the United States Attorney subscribed, and that the matters and things contained therein are true.

Alfred Johnson, Oscar C. Sandberg, Paul W. Simons, J. F. Beaupeurt, Archie M. Benson.

Subscribed and sworn to before me this 9th day of June, A. D. 1924. Edward J. Gerrity, Notary Public. (Seal.)

(Endorsed:) Filed Jun. 9, 1924. John H. R. Jamar, Clerk.

[fol. 55] And on, to-wit, the 26th day of June, 1924, came defendants, by their attorneys, and filed in the office of the clerk of said court their certain Answer to Information for Contempt in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In the District Court Thereof, June Term, A. D. 1924

UNITED STATES OF AMERICA

vs.

TERRENCE DRUGGAN, Alias TERRY DRUGGAN; B. J. BOWMAN, Richard Curtiss, Edward Davis, Alias Edward N. Davies; Ignatius Kramer, Alias Ignatius Kremer; Frank Lake, Francis A. Morrison, and Standard Beverage Corporation, a Corporation.

The Answer of Terrence Druggan, B. J. Bowman, Ignatius Kramer, Frank Lake, and Francis A. Morrison to the Petition Filed by Complainant June 9th, 1924.

These defendants, for answer to said petition, say that they did not on either the 31st day of May, the 2nd day of June, or the 3rd day of June, A. D. 1924, remove any cereal beverage, commonly known [fol. 56] as beer, containing more than one-half of one per centum of alcohol by volume from the premises mentioned in said complaint, nor caused the same to be transported, as alleged in said petition, to the California Avenue Team Track of the Baltimore and Ohio Chicago Terminal Railroad Co., nor cause any such beverage to be removed, nor aid, abet or assist in the removal or transportation, thereof, nor permit the same, nor manufacture, sell, keep, barter, dealcoholize or otherwise dispose of any such beverage nor neglect or fail to prevent the removal or transportation of any such beverage out of and from said premises.

And having answered, these defendants pray to be hence dismissed. Terrence Druggan et al., by Counsel, Defendants. Clarence Darrow, Floyd Lanham, Attorneys for Defendants.

(Endorsed:) Filed Jun. 26, 1924. John H. R. Jamar, Clerk.

Sentence and Judgment

And afterwards, to-wit, on the 11th day of July, 1924, being one of [fol. 57] the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Friday, July 11, A. D. 1924.

Present: Honorable James H. Wilkerson, District Judge.

No. 3850

UNITED STATES OF AMERICA

vs.

STANDARD BEVERAGE COMPANY, a Corporation; TERRANCE DRUGGAN, FRANK LAKE, B. J. BOWMAN, and IGNATIUS KRAMER

This cause having heretofore come on to be heard upon the information filed herein on the 9th day of June, 1924, against Terrance Druggan and Frank Lake for contempt of court for violating the temporary injunction issued herein, and the Court having considered the evidence adduced and being now fully advised in the premises finds said defendants, Terrance Druggan and Frank Lake, guilty of contempt of Court of violating the temporary injunction as [fol. 58] charged in said information.

It is therefore considered by the Court and is the sentence and judgment of the Court upon the finding aforesaid that the said defendants, Terrance Druggan and Frank Lake, and each of them be confined and imprisoned in the County Jail of Cook County, Illinios, for and during a period of one year, and that said defendants forfeit and pay to the United States of America a fine in the sum of One Thousand Dollars ($1,000.00), each, besides the costs in this behalf expended for which let execution issue.

Thereupon said defendants move the Court in arrest of judgment, which motion is heard and overruled, to which ruling said defendants except.

It is further ordered by the Court that Standard Beverage Company, B. J. Bowman and Ignatius Kramer be and they are hereby discharged.

[File endorsement omitted.]

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEMURRER TO PETITION FOR HABEAS CORPUS—Filed April 4, 1925

And the said Palmer E. Anderson, United States Marshal, and Wesley H. Westbrook, Jail Superintendent of the Cook County Jail of Cook County, Illinois, by Edwin A. Olson, United States Attorney, their attorney, come into court and say that the said petition for habeas corpus and the affidavit in support thereto and the matters and things therein set forth are, as therein alleged and set forth, insufficient in law to compel them, the said respondents, to answer thereto, and this they are ready to verify.

Wherefor, these respondents pray judgment and that said petition for habeas corpus may be dismissed and the application for writ of habeas corpus therein be denied.

Edwin A. Olson, United States Attorney.

[File endorsement omitted.]

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISMISSING PETITION—April 22, 1925

This day again come the parties to this suit by their attorneys, respectively, and thereupon this cause coming on further to be heard on Petitioner's petition for Writ of Habeas Corpus and the Respondents' Demurrer thereto, and the Court now hereafter hearing arguments of counsel and due deliberation by the Court, said Demurrer is sustained.

It is therefore Ordered that Petitioner's petition herein be and the same is hereby dismissed.

Whereupon the petitioner prays an appeal from the above judgment of this court to the Supreme Court of the United States which is allowed upon the petitioner filing herein his Appeal Bond in the penal sum of Five Hundred Dollars ($500.00) to be approved by the Court within ten days from this date,

Whereupon the Petitioner herein enters his motion to be released from custody upon filing a good and sufficient bond, which motion is overruled and denied.

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed April 22, 1925

And now comes your petitioner and respectfully represents that on the 22nd day of April, 1925, a judgment was entered by this court dismissing his petition for habeas corpus.

And your petitioner respectfully shows that in said record, proceedings and judgment in this cause lately pending against your petitioner manifest errors have intervened to the prejudice and injury of your petitioner, all of which will appear more in detail in the assignment of errors which is filed with this petition.

Wherefore, your petitioner prays that an appeal may be allowed from said judgment to the Supreme Court of the United States and that said appeal may be made a supersedeas upon the filing of a bond in the sum of Five Hundred ($500.00) Dollars; that the [fol. 62] petitioner may be admitted to bail pending the determination of the appeal in the Supreme Court.

Terrence Druggan, by Michael J. Ahern, Attorney for Petitioner. Thomas D. Nash, Michael J. Ahern, Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed April 22, 1925

And now comes petitioner—appellant, by Thomas D. Nash and Michael J. Ahern, his attorneys, and in connection with his petition for an appeal, says that in the record and proceedings, and judgment aforesaid, and during the trial of the above entitled cause in said District Court, error has intervened to his prejudice and petitioner—appellant here assigns the following errors, to-wit:

1. Said District Court erred in dismissing the petition for habeas corpus.

2. Said District Court erred in not holding that the petitioner—appellant, is wrongfully held and illegally imprisoned.

3. Said District Court erred in not holding that this petitioner—appellant, is held and imprisoned without due process of law and in violation of the Fifth Amendment of the Constitution of the United [fol. 64] States.

4. Said District Court erred in holding that the National Prohibition Act was a constitutional and valid Statute.

5. Said District Court erred in holding that Title II of the National Prohibition Act, except Sections 1, 27, 37 and 38 thereof, is a constitutional and valid Statute.

6. Said District Court erred in holding that the injunctional order, upon which the contempt proceedings were founded, was a valid order. The said order provided

"that pending the final hearing and determination, and until the conclusion of the trial of said bill for injunction against said nuisance, no liquor shall be manufactured, sold, kept, bartered, dealcoholized, or otherwise disposed of."

The Court erred in so holding for the following reasons:

A. That there was no provision or recital in said injunctional order restraining petitioner from removing any liquor or other property from said premises;

B. That the injunction for contempt set forth three overt acts, each specifically relating to an alleged removal of liquor from said premises;

C. That in contempt proceedings, under Section 24 of Title II of the National Prohibition Act, the particular recital of the Injunctional Order upon which such proceedings are founded, is by implication incorporated in Section 24, as fully as though word for word set forth;

D. That the jurisdiction of the District Court to entertain said contempt proceedings was based upon said Section 24;

E. That the jurisdiction of the District Court in the contempt proceeding in the instant case was defined by the terms of the injunctional order and did not reach acts of removal which were not included in the particular restraints and inhibitions set forth in [fol. 65] the injunctional order;

F. That the District Court was without jurisdiction under Section 24 of Title II of the Prohibition Act, to proceed under an information for contempt, charging acts of removal not specifically restrained by the injunctional order.

7. Said District Court erred, in holding that the National Prohibition Act, excepting only Sections 1, 27, 37 and 38 of Title II thereof, upon which said Act, said judgment and conviction were based, is a valid and constitutional law; for the said Act is unconstitutional for the following reasons:

A. That section 1 of the Eighteenth Amendment to the Constitution of the United States, provides:

"After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the im-

portation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited;"

B. That the Eighteenth Amendment was proposed to the legislatures of the several States by the Sixty-fifth Congress, on the 19th day of December, 1917, and was, on the 16th day of January, 1919, ratified by the legislatures of three-fourths of the whole number of States in the United States and certified by the acting Secretary of State as valid to all intents and purposes as a part of the Constitution of the United States;

C. That the Supreme Court of the United States, in Dillon vs. Glos, 256 U. S. 368, declared that the Eighteenth Amendment to the Constitution of the United States went into effect on January 16th, 1920;

D. That under Section 1 of the Eighteenth Amendment prohibition did not become effective and operative until one year from the date of its adoption by three-fourths of the whole number of States, that is to say, it became effective and operative on January 16, 1920;

[fol. 66] E. That Congress was without constitutional power to legislate upon the subject of prohibition of intoxicating liquors until the Eighteenth Amendment became operative on January 16, 1920;

F. That the National Prohibition Act was passed over the President's veto on October 28, 1919, nearly three months before said amendment became operative;

G. That Title II of the National Prohibition Act having been passed prior to the time when the Eighteenth Amendment went into effect, was passed without authority derived from the Constitution of the United States and is, therefore, unconstitutional and void;

H. That there is no provision in the Eighteenth Amendment giving to Congress power to legislate with reference to the subject-matter of said Amendment prior to its effective date.

8. Said District Court erred in holding as valid and constitutional, Section 24 of Title II of the National Prohibition Act—the contempt Section upon which the judgment complained of is founded. The court erred in so holding, for the following reasons:

A. That said Section 24 of Title II fixes an arbitrary maximum and minimum penalty, regardless of the degree of fault of the contemnor and is for that reason an unconstitutional interference with and invasion of the judicial power.

B. That the discretion of the chancellor in assessing penalties upon contemnors is destroyed by this section;

C. That the District Courts from their creation by the Act of 1831 came into existence clad with plenary power to vindicate their authority and to punish contemnors;

D. That said section 24 invades, supersedes, limits and restricts the inherent plenary power of the District Courts to assess the penalty for contempts of their authority and is, therefore, an unconstitu- [fol. 67] tional interference with and invasion of the judicial power;

E. That said section 24 in its definition of an arbitrary maximum and minimum punishment without regard to the extent of the contemnor's fault is the creation of a new statutory crime to be tried by a court of equity without a jury and upon affidavits without confrontation of witnesses in violation of the Sixth Amendment to the Constitution of the United States.

9. Said District Court erred in not holding that the injunctional order, upon which the contempt proceedings were based, was obtained and granted without notice first given to petitioner and for that reason was illegal and void. The court erred in this for the following reasons:

A. That Equity Rule 73 provides that

"No preliminary injunction shall be granted without notice to the opposite party;"

B. That under sections 913 and 917 of the Revised Statutes the Equity Rules are given the same force and effect as Acts of Congress;

C. That section 22 of Title II of the National Prohibition Act, under which the bill for injunction aforesaid was instituted, provides that

"Such action shall be brought and tried as an action in equity," etc;

D. That Equity Rule 73 applies to bills brought under section 22 of Title II of the National Prohibition Act;

E. That the non-compliance with Equity Rule 73 went directly to the jurisdiction of the court to grant the temporary injunction aforesaid;

F. That the injunctional order so violating Equity Rule 73 is void and all of the contempt proceedings thereon and the judgment, sentence and fine therein are likewise null and void and of no legal effect whatever.

[fol. 68] 10. Said District Court erred in not holding that the judgment for contempt was void and illegal, for the following reasons:

A. That a judgment for contempt is void unless the facts found to be contemptuous are recited in the judgment order or incorporated therein, by reference to the moving papers, which, in turn, must recite sufficient facts to establish prima facie a contempt;

B. That said judgment order found your petitioner guilty 'as charged in the information', but your petitioner shows, that, in addition to three acts of removal described in said information, he was charged therein with 'otherwise disposing of said beverage' without

further description or recital of any acts or facts which might be embraced by the term 'otherwise disposing of';

C. That said judgment order in finding your petitioner guilty as charged in said information included a finding that he was guilty of 'otherwise disposing of' without reciting any facts which would constitute 'otherwise disposing of' either in the order itself or by reference to the moving papers;

D. That said judgment as to such finding is void.

11. Said District Court erred in not holding that the judgment order in the contempt case was void in its entirety, for the following reasons:

A. That the sentence imposed was an integral part of said judgment order;

B. That it was a unit and fixed a joint and nonseverable penalty for all of the acts of which your petitioner was found guilty, including the alleged act of 'otherwise disposing of said beverage';

[fol. 69] C. That said judgment as to said last mentioned finding was void and that therefore said judgment order in its entirety was void in that it fixed an aggregate penalty on the several findings, one of which at least is void.

By reason whereof this petitioner-appellant, prays that said judgment may be reversed and that he be ordered discharged.

Thomas D. Nash, Michael J. Ahern, Attorneys for Petitioner-Appellant.

[File endorsement omitted.]

[fol. 70] Bond on Appeal for $500—Approved and filed April 28, 1925; omitted in printing

---

[fol. 71] In United States District Court

[Title omitted]

Præcipe for Transcript of Record—Filed April 29, 1925

To the Hon. Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

Please prepare record in above entitled cause to be filed in the Supreme Court of the United States and include therein the following, to wit:

1. Placita.
2. Petition for writ of habeas corpus.
3. Demurrer to petition.

4. Order and judgment sustaining demurrer and dismissing petition.
5. Petition for appeal and assignments of error.
6. Order allowing appeal.
7. Bond.

Respectfully yours, Thomas D. Nash, Michael J. Ahern, Attorneys for Petitioner.

Received a copy of the foregoing Præcipe this 29th day of April, 1925.

Edwin A. Olson, M. I., United States District Attorney.

[File endorsement omitted.]

[fol. 72] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this Court in the cause entitled Terrence Druggan vs. Palmer E. Anderson, United States Marshal for the Northern District of Illinois, Eastern Division and Wesley Westbrook, Superintendent of the Cook County Jail of Cook County, Illinois, No. 35185, as the same appear from the original records and files thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 29th day of April, A. D. 1925.

Charles M. Bates, Clerk. (Seal of Dist. Court U. S., Northern Dist. Illinois, 1855.)

Endorsed on cover: File No. 31,116. N. Illinois D. C. U. S. Term No. 415. Terrence Druggan, appellant, vs. Palmer E. Anderson, United States marshal, etc., and Wesley Westbrook, superintendent of the Cook County jail of Cook County, Illinois. Filed May 2nd, 1925. File No. 31,116.